

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

DARRELL COUSIN,

Plaintiff,

v.

NO. 1:00CV125-S-D

RUBY TUESDAY, INC.

Defendant.

OPINION

In this case, plaintiff alleges he was terminated for thwarting the homosexual advances of his manager. Presently before the court is defendant's unrefuted motion for summary judgment. Although this court cannot grant summary judgment by default, i.e., simply because there is no opposition to the motion, *Hibernia National Bank v. Administracion Central Sociedad Anonima*, 776 F.2d 1277, 1279 (5th Cir. 1985), the court may accept as undisputed the movant's version of the facts and grant the motion where the movant has made a prima facie showing of its entitlement to summary judgment. *Eversley v. Mbank Dallas*, 843 F.2d 172, 174 (5th Cir. 1988).

While plaintiff maintains that he was terminated after he refused the request of his manager, Paul Timothy Martin, "to make love" to him, he has not countered with any evidence to throw into question defendant's version of the termination as outlined in Martin's affidavit:

On August 29, 1999, I was not scheduled to work; however, I went into the restaurant in the late evening to check on the operations. I was approached by Darrell Cousin, who asked to talk with me regarding the reduction of his hours. We sat in a booth in the restaurant. During that discussion, I advised Mr. Cousin that I had been forced to reduce his hours, along with others', due to the lack of business and the fact that we were operating with too much labor costs and overtime. He began

shouting and cursing and accusing me of asking him to sleep with me. He stood up and repeated the allegation loudly enough for employees and customers to hear. I asked him to hold his voice down, and when he refused, I got up to walk away so as to avoid further incident. He followed me and continued making the same allegation in a loud voice, which was clearly disrupting the restaurant and our customers. When it was obvious that he was going to continue to disrupt the operations of the restaurant, I terminated him. I did not make any comment to him regarding sleeping with him or directly or indirectly inferring anything to do with sexual activity, nor did I make any type of physical or sexual overture to him. I terminated Mr. Cousin solely for creating a disturbance in the restaurant.

In this court's view, defendant has indeed made a prima facie showing of its entitlement to summary judgment, plaintiff having failed to come forward with any evidence to raise a genuine issue of material fact that the real reason he was terminated was not insubordination but rather his refusal to submit to his manager's sexual demand. Defendant's motion for summary judgment is therefore granted. An appropriate order and final judgment shall issue.

This _____ day of May, 2001.

SENIOR JUDGE